

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
Cellular South License, Inc.	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
Throughout its Licensed Service Area	)	
In the State of Alabama	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 3, 2002**

**Released: December 4, 2002**

By the Deputy Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we grant the petition of Cellular South License, Inc. (Cellular South) to be designated as an eligible telecommunications carrier (ETC) throughout its licensed service area in the state of Alabama pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).<sup>1</sup> In so doing, we conclude that Cellular South, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1).<sup>2</sup> Specifically, we conclude that Cellular South has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. Consistent with our recent decision addressing a similar request,<sup>3</sup> we find that the designation of Cellular South as an ETC in those areas served by rural telephone companies serves the public interest by promoting competition and the provision of new technologies to consumers in high-cost and rural areas of Alabama.

2. Where Cellular South is not licensed to serve an entire study area of a rural telephone company affected by this designation, Cellular South has requested that we redefine the service areas of the affected rural telephone companies by wire center boundary for ETC designation purposes.<sup>4</sup> We recently agreed to a redefinition of the service areas of these rural telephone companies in the *RCC Holdings Order*, subject to agreement by the Alabama Public Service Commission (Alabama

<sup>1</sup> Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, filed June 4, 2002 (Cellular South Petition).

<sup>2</sup> 47 U.S.C. § 214(e)(1).

<sup>3</sup> *Federal State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-3181 (rel. Nov. 27, 2002) (*RCC Holdings Order*).

<sup>4</sup> Cellular South Petition at 11-13, Exhibit F (Rural Service Areas Requiring Reclassification Along Wire Center Boundaries). Cellular South's CMRS licensed service area does not completely encompass the service areas of three of the rural telephone companies. See Appendix C. In those cases, we designate Cellular South as an ETC for the study areas or portions thereof it is licensed to serve, subject to the Alabama Public Service Commission's agreement to redefine service areas as discussed in Section III.E, *infra*.

Commission) in accordance with applicable Alabama Commission requirements.<sup>5</sup> Accordingly, Cellular South's request is moot.

3. Several parties to this proceeding raise concerns about the nature of high-cost support with regard to competitive ETCs.<sup>6</sup> Such concerns include, for example, questions about the impact on the universal service fund of supporting competitive ETCs, as well as questions about subsidizing multiple lines used by the same subscriber. Although we find that these issues reach beyond the scope of this Order, which designates a particular carrier as an ETC, we recognize that these are important issues regarding universal service high-cost support. We note that the Commission has recently requested the Federal-State Joint Board on Universal Service (Joint Board) to provide recommendations on the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing service, as well as on the Commission's rules regarding support for second lines."<sup>7</sup>

## II. BACKGROUND

### A. The Act

4. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."<sup>8</sup> Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.<sup>9</sup>

5. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.<sup>10</sup> Section 214(e)(6), however, directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>11</sup> Under section 214(e)(6), upon request and consistent with the public interest, convenience, and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of

---

<sup>5</sup> *RCC Holdings Order* at paras. 37-42 (redefining the service areas of Butler Telephone Company, Frontier Communications of the South, Inc., and Frontier Communications of Alabama, Inc. such that each wire center is a separate service area). If the Alabama Commission does not agree to the proposal to redefine the affected rural service areas, we will reexamine our decision with regard to redefining these service areas.

<sup>6</sup> See Alabama Commission Reply Comments at 2-3, 5-6, 8; Alabama Rural LECs Comments at 15-20; Alabama Rural LECs Reply Comments at 3-9; National Telecommunications Cooperative Association (NTCA) Comments at 4-5, 7-9. See also Letter from Mark D. Wilkerson, Counsel for the Alabama Rural LECs, to Marlene Dortch, FCC, dated Sept. 5, 2002 (Rural LECs Sept. 5 *ex parte*).

<sup>7</sup> *Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 02-307, Order (rel. Nov. 8, 2002).

<sup>8</sup> 47 U.S.C. § 254(e).

<sup>9</sup> 47 U.S.C. § 214(e)(1).

<sup>10</sup> 47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

<sup>11</sup> 47 U.S.C. § 214(e)(6). See, e.g., *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18133 (2001) (*Western Wireless Pine Ridge Order*); *Federal-State Joint Board on Universal Service; Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 9589 (Wireline Comp. Bur. 2002).

section 214(e)(1).<sup>12</sup> Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.<sup>13</sup>

## **B. Commission Requirements for ETC Designation and Redefinition of a Service Area**

6. Filing Requirements for ETC Designation. The Commission delegated authority to perform ETC designations to the Chief of the Wireline Competition Bureau pursuant to section 214(e)(6).<sup>14</sup> An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;” (4) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefor using media of general distribution;” and (5) if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission.<sup>15</sup>

7. Twelfth Report and Order. On June 30, 2000, the Commission released the *Twelfth Report and Order* which, among other things, set forth how a carrier seeking ETC designation from the Commission must demonstrate that the state commission lacks jurisdiction to perform the ETC designation.<sup>16</sup> Carriers seeking designation as an ETC for service provided on non-tribal lands must provide the Commission with an “affirmative statement” from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.<sup>17</sup> The requirement to provide an “affirmative statement” ensures that the state commission has had “a specific opportunity to address and resolve issues involving a state commission’s authority under state law to regulate certain carriers or classes of carriers.”<sup>18</sup>

8. Redefinition of a Service Area. Under section 214(e)(5), “[i]n the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.”<sup>19</sup> Section 54.207(d) permits the Commission to initiate a proceeding to consider a definition of a service area that is different from a rural telephone company’s study area as long as the Commission seeks agreement on the new definition with the applicable state commission.<sup>20</sup> Under section 54.207(d)(1), the

---

<sup>12</sup> 47 U.S.C. § 214(e)(6).

<sup>13</sup> *Id.*

<sup>14</sup> *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 (1997). The Wireline Competition Bureau was previously known as the Common Carrier Bureau.

<sup>15</sup> *Id.* at 22948-49. See also *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 (2000) (*Declaratory Ruling*), *recon. pending*.

<sup>16</sup> See *Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

<sup>17</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93. The Commission defined an “affirmative statement” as “any duly authorized letter, comment, or state commission order indicating that [the state commission] lacks jurisdiction to perform the designation over a particular carrier.” *Id.* at 12264, para. 113.

<sup>18</sup> *Id.* (citations omitted).

<sup>19</sup> 47 U.S.C. § 214(e)(5).

<sup>20</sup> See 47 C.F.R. § 54.207(d)-(e). Any proposed definition will not take effect until both the Commission and the state commission agree upon the new definition. See 47 C.F.R. § 54.207(d)(2). Cellular South states in its petition

Commission must petition a state commission with the proposed definition according to that state commission's procedures.<sup>21</sup> In that petition, the Commission must provide its proposal for redefining the service area and its decision presenting reasons for adopting the new definition, including an analysis that takes into account the recommendations of the Joint Board.<sup>22</sup> When the Joint Board recommended that the Commission retain the current study areas of rural telephone companies as the service areas for such companies, the Joint Board made the following observations: (1) the potential for "creamskimming" is minimized by retaining study areas because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area; (2) the Telecommunications Act of 1996 (1996 Act), in many respects, places rural telephone companies on a different competitive footing from other local exchange companies, (3) there would be an administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than a study area level.<sup>23</sup> The Commission delegated authority to the Chief of the Wireline Competition Bureau to redefine service areas.<sup>24</sup>

### C. Cellular South's Petition

9. On June 4, 2002, Cellular South filed with this Commission a petition pursuant to section 214(e)(6) seeking designation as an ETC throughout its licensed service area in the state of Alabama.<sup>25</sup> Cellular South contends that the Alabama Commission has issued an "affirmative statement" that the Alabama Commission does not have jurisdiction to designate a CMRS carrier as an ETC. Accordingly, Cellular South asks the Commission to exercise jurisdiction and designate Cellular South as an ETC pursuant to section 214(e)(6).<sup>26</sup> Cellular South also maintains that it satisfies the statutory and regulatory prerequisites for ETC designation, and that designating Cellular South as an ETC will serve the public interest.<sup>27</sup>

10. Cellular South also requests the Commission to redefine the service areas of three rural telephone companies because it is not able to serve the entire study areas of these companies.<sup>28</sup> Cellular South states that as a wireless carrier it is restricted to providing service only in those areas where it is

---

that it may be designated as an ETC once the Commission redefines service areas in accordance with section 54.207(c) of the Commission's rules. *See* Cellular South Petition at 10. Because section 54.207(c) contemplates a situation where a state commission has proposed a new service area definition, we do not act pursuant to section 54.207(c) in this instance. Instead, we will consider Cellular South's request to redefine service areas under section 54.207(d) of the Commission's rules.

<sup>21</sup> *See* 47 C.F.R. § 54.207(d)(1). We note that the state of Alabama has stated that it has no process for redefining service areas. *See RCC Holdings Order* at para. 8, n.22 (citing Supplement to RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, filed August 26, 2002 at 1).

<sup>22</sup> *See* 47 C.F.R. § 54.207(d)(1).

<sup>23</sup> *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (*Recommended Decision*).

<sup>24</sup> 47 C.F.R. § 54.207(e).

<sup>25</sup> *See generally* Cellular South Petition. On June 21, 2002, the Wireline Competition Bureau released a Public Notice seeking comment on the Cellular South Petition. *See Wireline Competition Bureau Seeks Comment on Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45, Public Notice, 17 FCC Rcd 11887 (2002).

<sup>26</sup> Cellular South Petition at 4.

<sup>27</sup> *Id.* at 2, 13.

<sup>28</sup> *See id.* at 11-13, Exhibit F. We note that in its filing, Cellular South is inconsistent in its listing of Frontier Communications of the South, Inc. (Frontier-South) as a separate entity from Frontier Communications of Alabama, Inc. (Frontier-AL). *Compare* Cellular South Petition at 11 *with* Cellular South Petition, Exhibit F. We will treat Frontier-South as a separate company from Frontier-AL.

licensed by the Commission.<sup>29</sup> It adds that it is not picking and choosing the lowest cost wire centers of the affected rural telephone companies but instead is basing its requested ETC service area solely on its licensed service area and proposes to serve the entirety of that area.<sup>30</sup> Cellular South maintains that the proposed redefinition of the rural telephone company service areas is consistent with the recommendations regarding rural telephone company study areas set forth by the Joint Board in its *Recommended Decision*.<sup>31</sup>

### III. DISCUSSION

11. We find that Cellular South has met all the requirements set forth in sections 214(e)(1) and (e)(6) to be designated as an ETC by this Commission. We conclude that Cellular South has demonstrated that the Alabama Commission lacks the jurisdiction to perform the designation and that the Commission therefore may consider Cellular South's petition under section 214(e)(6). We also conclude that Cellular South has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area upon designation as an ETC. In addition, we find that the designation of Cellular South as an ETC in those areas served by rural telephone companies serves the public interest by promoting competition and the provision of new technologies to consumers in high-cost and rural areas of Alabama. Pursuant to our authority under section 214(e)(6), we therefore designate Cellular South as an ETC throughout its licensed service area in the state of Alabama. In areas where Cellular South cannot serve the entire study area of a rural telephone company, Cellular South's ETC designation shall be subject to the Alabama Commission's agreement on a new definition for the rural telephone company service areas.<sup>32</sup> In all other areas, as described herein, Cellular South's ETC designation is effective immediately.

#### A. Commission Authority to Perform the ETC Designation

12. We find that Cellular South has demonstrated that the Alabama Commission lacks the jurisdiction to perform the requested ETC designation and that the Commission has authority to consider Cellular South's petition under section 214(e)(6) of the Act. Cellular South submitted as an "affirmative statement" an order issued by the Alabama Commission addressing a petition filed by several CMRS carriers seeking ETC designation or, in the alternative, clarification regarding the jurisdiction of the Alabama Commission to grant ETC status to wireless carriers.<sup>33</sup> In the *Alabama Commission Order*, the Alabama Commission concluded that it "has no authority to regulate, *in any respect*, cellular services, broadband personal communications services, and commercial mobile radio services in Alabama."<sup>34</sup> The Alabama Commission advised the petitioners and "all other wireless providers seeking ETC status [to] pursue their ETC designation request with the FCC as provided by 47 U.S.C. § 214(e)(6)."<sup>35</sup> The Alabama Commission's decision in the *Alabama Commission Order* is consistent with the Code of Alabama and a March 2000 declaratory ruling issued by the Alabama Commission.<sup>36</sup>

---

<sup>29</sup> Cellular South Petition at 12.

<sup>30</sup> *Id.* at 12.

<sup>31</sup> *Id.* at 11-13. See 47 U.S.C. § 214(e)(5).

<sup>32</sup> Cellular South submits that it cannot serve the entire study areas of the following rural telephone companies: Butler Telephone Company (Butler), Frontier-AL, and Frontier-South.

<sup>33</sup> See Cellular South Petition, Exhibit A (Alabama Public Service Commission, *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, Order, Docket No. U-4400 at 1-3 (March 12, 2002) (*Alabama Commission Order*)).

<sup>34</sup> *Alabama Commission Order* at 2 (emphasis in original).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* See generally Alabama Public Service Commission, *Bell South Mobility, Inc. Petition for Declaratory Ruling*, Order, Docket No. 26414 (March 2, 2000) (*Alabama Declaratory Ruling*). The Alabama Code definition of

13. We reject the contention of the Alabama Rural LECs that Cellular South has not provided an “affirmative statement” that meets the Commission’s requirements found in the *Twelfth Report and Order*.<sup>37</sup> To the contrary, as required by the *Twelfth Report and Order*, the Alabama Commission was given the specific opportunity to address and resolve the issue of whether it has authority to regulate CMRS providers as a class of carriers when it rendered its decision in the *Alabama Commission Order*.<sup>38</sup> We find it sufficient that the Alabama Commission determined that it has no authority to regulate CMRS carriers “in any respect” and that *all* “wireless providers seeking ETC status in Alabama should pursue their ETC designation request with the FCC . . . .”<sup>39</sup> Furthermore, the Alabama Commission filed comments in this proceeding stating that it does not have regulatory authority over CMRS providers in Alabama.<sup>40</sup> Therefore, based on the record before us, we find that the Alabama Commission lacks jurisdiction to designate Cellular South as an ETC and that we have authority to perform the requested ETC designation in the state of Alabama pursuant to section 214(e)(6).<sup>41</sup>

## **B. Offering and Advertising the Supported Services**

14. Offering the Services Designated for Support. We find that Cellular South has demonstrated that it will offer the services supported by the federal universal service support mechanism upon designation as an ETC. We therefore conclude that Cellular South complies with the requirement of section 214(e)(1)(A) to “offer the services that are supported by Federal universal service support mechanisms under section 254(c).”<sup>42</sup> As noted in its petition, Cellular South is a D Block licensee authorized to provide broadband personal communications service (PCS) in the Mobile, Alabama Basic Trading Area (BTA) and a F Block licensee authorized to provide broadband PCS in the Meridian, Mississippi BTA, a significant portion of which is located in western Alabama.<sup>43</sup> Cellular South states that it currently provides all of the services and functionalities enumerated in section 54.101(a) of the Commission’s rules throughout its cellular service area in Alabama.<sup>44</sup> Upon designation as an ETC, Cellular South also indicates that it will make available a universal service offering over its wireless network infrastructure using the same facilities it uses to serve its existing customers.<sup>45</sup> Cellular South states that its universal service offering will consist of all of the services supported by the universal

---

“cellular telecommunications services” includes all cellular services, broadband personal communications services and CMRS. *Id.* at 2. See also Ala. Code § 40-21-120(1)a (2002). The Alabama Code definition of “cellular telecommunications provider” includes all licensees of the Federal Communications Commission to provide cellular telecommunications services, broadband personal communications services, CMRS, and all resellers of such services. See *Alabama Declaratory Ruling* at 2. See also Ala. Code § 40-21-120(1)b (2002).

<sup>37</sup> See Alabama Rural LECs Comments at 6-9. The Alabama Rural LECs contend that Cellular South must obtain an order directed to Cellular South rather than rely on language in the *Alabama Commission Order*. See *id.* at 7.

<sup>38</sup> See *Twelfth Report and Order*, 15 FCC Rcd at 12264, para 113.

<sup>39</sup> See *Alabama Commission Order* at 2.

<sup>40</sup> See Alabama Commission Reply Comments at 1.

<sup>41</sup> 47 U.S.C. § 214(e)(6). As noted above, the Commission has specifically delegated this authority to the Wireline Competition Bureau.

<sup>42</sup> 47 U.S.C. § 214(e)(1)(A). The Commission has defined the services that are to be supported by the federal universal service support mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

<sup>43</sup> Cellular South Petition at 1. We note that this Order designates Cellular South as an ETC only for a service area within the state of Alabama.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> *Id.* at 2. See also Cellular South Petition, Exhibit B (Declaration Regarding Supported Services).

service support mechanism plus Lifeline service.<sup>46</sup> Finally, Cellular South commits to providing its universal service offering to any requesting customer within its designated service area.<sup>47</sup>

15. The Alabama Rural LECs raise several concerns about Cellular South's service offerings. We address each of these concerns below, and in so doing, we conclude that Cellular South has demonstrated that it will offer the services supported by the federal universal service support mechanism upon designation as an ETC. As an initial matter, we note that the Commission has previously stated that to require a carrier to actually provide the supported services before it is designated an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service.<sup>48</sup> Instead, "a new entrant can make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service."<sup>49</sup>

16. We reject the Alabama Rural LECs' argument that Cellular South does not offer all of the services supported by the federal universal service support mechanisms as required by section 214(e)(1)(A).<sup>50</sup> Specifically, the Alabama Rural LECs claim that Cellular South does not currently provide voice grade service to all areas for which it seeks ETC designation and that Cellular South fails to allege that it is currently providing local usage.<sup>51</sup> In addition, the Alabama Commission states in its comments that "[t]he lack of [wireless] coverage in rural areas also raises serious concerns whether Cellular South presently has, or will acquire in a timely manner, the ability to provide emergency services in all of its rural service territories."<sup>52</sup>

17. Although the Alabama Rural LECs' claim that Cellular South should be denied ETC designation because Cellular South does not offer voice grade service to all areas for which it seeks ETC designation, we find that the existence of so-called "dead spots" in Cellular South's network does not preclude us from designating Cellular South as an ETC.<sup>53</sup> For the same reasons, we dismiss the Alabama Commission's concerns regarding Cellular South's ability to provide emergency services.<sup>54</sup> Cellular South has committed to provide all services supported by universal service upon its designation as an ETC.<sup>55</sup> The Commission has determined that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.<sup>56</sup> Moreover, Cellular South has committed to improve its network.<sup>57</sup> Cellular South states that it will use any high-cost support it receives "to improve its network and enable

---

<sup>46</sup> Cellular South Petition at 2, 4-8.

<sup>47</sup> *Id.* at 2.

<sup>48</sup> See *Declaratory Ruling*, 15 FCC Rcd at 15173-74, paras. 12-14. In the *Declaratory Ruling*, the Commission stated that "a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support." *Id.* at 15173, para. 13.

<sup>49</sup> *Declaratory Ruling*, 15 FCC Rcd at 15178, para. 24.

<sup>50</sup> See Alabama Rural LECs Comments at 9-13; Alabama Rural LECs Reply Comments at 2-4.

<sup>51</sup> See Alabama Rural LECs Comments at 9-13.

<sup>52</sup> Alabama Commission Reply Comments at 4.

<sup>53</sup> Alabama Rural LECs Comments at 10.

<sup>54</sup> See Alabama Commission Reply Comments at 4.

<sup>55</sup> Cellular South Petition at 2, 4, Exhibit B.

<sup>56</sup> See *Declaratory Ruling*, 15 FCC Rcd at 15175, para. 17.

<sup>57</sup> Cellular South Reply Comments at 7.

Alabama's rural customers to have a meaningful choice of service providers."<sup>58</sup>

18. In addition, the Commission's rules acknowledge the existence of dead spots.<sup>59</sup> "Dead spots" are defined as "[s]mall areas within a service area where the field strength is lower than the minimum level for reliable service."<sup>60</sup> Section 22.99 of the Commission's rules states that "[s]ervice within dead spots is presumed."<sup>61</sup> Additionally, the Commission's rules provide that "cellular service is considered to be provided in all areas, including dead spots . . . ."<sup>62</sup> Because "dead spots" are acknowledged by the Commission's rules, we are not persuaded by the Alabama Rural LECs that the possibility of dead spots demonstrates that Cellular South is not willing or capable of providing acceptable levels of service throughout its service area.

19. We find sufficient Cellular South's showing that it will offer minimum local usage as part of its universal service offering. Accordingly, we dismiss the Alabama Rural LECs' claim that ETC designation should be denied because Cellular South fails to allege that it is currently providing local usage.<sup>63</sup> Although the Commission did not set a minimum local usage requirement, in the *Universal Service Order*, it determined that ETCs should provide some minimum amount of local usage as part of their "basic service" package of supported services.<sup>64</sup> Cellular South states that it will comply with any and all minimum local usage requirements adopted by the FCC.<sup>65</sup> It adds that it will meet the local usage requirement by including a variety of local usage plans as part of a universal service offering.<sup>66</sup> We find that Cellular South's commitment to provide local usage is sufficient. Moreover, contrary to the arguments of the Alabama Rural LECs,<sup>67</sup> Cellular South is not required to provide a detailed description of its planned universal service offerings beyond its commitment to provide, or statement that it is now providing, all of the services supported by the universal service support mechanism.<sup>68</sup>

20. Finally, we note that the Alabama Commission expressed concern that Cellular South intends to provide advanced services using high-cost universal service funds.<sup>69</sup> The Alabama Commission states that "[a]dvanced services are not included in the nine core services and functionalities identified by the FCC to be provided or funded through the universal service program."<sup>70</sup> Although the Alabama Commission is correct that the provision of advanced services is not a supported service, the Commission explained in the *RTF Order* that "use of support to invest in infrastructure capable of providing access to advanced services does not violate section 254(e), which mandates that support be used 'only for the

---

<sup>58</sup> *Id.*

<sup>59</sup> See 47 C.F.R. § 22.99.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> 47 C.F.R. § 22.911(b).

<sup>63</sup> Alabama Rural LECs Comments at 9-13.

<sup>64</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8813, para. 67 (1997) (*Universal Service Order*) (subseq. history omitted). Although the Commission's rules define "local usage" as "an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users," the Commission has not specified a number of minutes of use. 47 C.F.R. § 54.101(a)(2).

<sup>65</sup> See Cellular South Petition at 6.

<sup>66</sup> *Id.*

<sup>67</sup> See Alabama Rural LECs Comments at 9-13.

<sup>68</sup> See generally *Declaratory Ruling*.

<sup>69</sup> See Alabama Commission Reply Comments at 5.

<sup>70</sup> *Id.*



provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>71</sup> The Commission determined that “although the high-cost loop support mechanism does not support the provision of advanced services, our policies do not impede the deployment of modern plant capable of providing access to advanced services.”<sup>72</sup> Nothing in the record before us suggests that Cellular South intends to use high-cost universal service support in a manner inconsistent with the statute or our rules.

21. For these reasons, we find that Cellular South, because it already provides or commits to provide the supported services, has demonstrated its capability and commitment to provide universal service.<sup>73</sup> Moreover, we emphasize that if Cellular South fails to fulfill its ETC obligations after it begins receiving universal service support, the Commission is authorized to revoke its ETC designation.<sup>74</sup>

22. Offering the Supported Services Using a Carrier’s Own Facilities. We conclude that Cellular South has demonstrated that it satisfies the requirement of section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier’s services.<sup>75</sup> Cellular South states that it provides the supported services “using its existing network infrastructure, which includes the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing customers.”<sup>76</sup> We find this certification sufficient to satisfy the facilities requirement of section 214(e)(1)(A).

23. Advertising the Supported Services. We conclude that Cellular South has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution.<sup>77</sup> Cellular South certifies that it “will use media of general distribution that it currently employs to advertise its universal service offerings throughout the service areas designated by the Commission.”<sup>78</sup> Contrary to the comments filed by the Alabama Rural LECs, we find that this certification satisfies section 214(e)(1)(B).<sup>79</sup> The Alabama Rural LECs suggest that Cellular South must supply proof as to how it intends to comply with the rules requiring an ETC to publicize the availability of its Lifeline and Linkup services.<sup>80</sup> The publicity rules for Lifeline and Linkup services, however, apply only to already-designated ETCs.<sup>81</sup> Accordingly, Cellular South will not be required to publicize Lifeline and Linkup until it is designated as an ETC. Therefore, at this time, it is sufficient that Cellular South commits to advertising the supported services using media of general distribution. Moreover, as the Commission has stated in prior decisions, because an ETC receives universal service support only to the extent that it serves customers, we believe that strong economic incentives exist, in addition to the statutory obligation, for an ETC to advertise its universal service

<sup>71</sup> *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11322, para. 200 (2001) (*RTF Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001), *recon. pending*.

<sup>72</sup> *RTF Order*, 16 FCC Rcd at 11322, para. 200.

<sup>73</sup> See Cellular South Petition, Exhibit B.

<sup>74</sup> See *Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15. See also 47 U.S.C. § 254(e).

<sup>75</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>76</sup> Cellular South Petition at 8, Exhibit B.

<sup>77</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>78</sup> Cellular South Petition at 9.

<sup>79</sup> See Alabama Rural LECs Comments at 13-14.

<sup>80</sup> See *id.* See 47 C.F.R. §§ 54.405(b) and 54.411(d).

<sup>81</sup> See *Twelfth Report and Order*, 15 FCC Rcd at 12249-50, paras. 76-80.

offering in its designated service area.<sup>82</sup>

### C. Public Interest Analysis

24. We conclude that it is in the public interest to designate Cellular South as an ETC in Alabama in areas that are served by rural telephone companies.<sup>83</sup> We conclude that Cellular South has made a threshold demonstration that its service offering fulfills several of the underlying federal policies favoring competition and the provision of affordable telecommunications service to consumers.

25. We find that the customers in Alabama affected by this designation will benefit from the designation of Cellular South as an ETC.<sup>84</sup> An important goal of the 1996 Act is to open local telecommunications markets to competition.<sup>85</sup> The Commission has held that designation of qualified ETCs promotes competition and benefits consumers by increasing customer choice, innovative services, and new technologies.<sup>86</sup> Competition will allow customers in rural Alabama to choose service based on pricing, service quality, customer service, and service availability. In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers in Alabama by creating incentives to ensure that quality services are available at “just, reasonable, and affordable rates.”<sup>87</sup>

26. We find that the designation of Cellular South as an ETC may provide benefits to rural consumers that are not available from the incumbent carriers. For example, Cellular South submits that it “believes that in all cases its local calling area will be substantially larger [than that of the incumbent carrier], which will reduce intra-LATA toll charges typically associated with wireline service.”<sup>88</sup> Also, Cellular South indicates that it will include a variety of local usage plans as part of its universal service offering.<sup>89</sup> The Commission has stated that rural consumers may benefit from expanded local calling areas and an offering of a variety of calling plans because such options may make intrastate toll calls more affordable to those consumers.<sup>90</sup>

27. In addition, we conclude that consumers will not be harmed by the designation of Cellular South as an ETC in rural areas in Alabama. We acknowledge that Congress expressed a specific intent to preserve and advance universal service in rural areas as competition emerges.<sup>91</sup> The Commission has indicated that, in establishing a public interest requirement for those areas served by rural telephone companies, Congress was concerned that consumers in rural areas continue to be adequately served should the incumbent carrier exercise its option to relinquish its ETC designation under section

---

<sup>82</sup> See *Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18137, para. 10.

<sup>83</sup> See 47 U.S.C. § 214(e)(6).

<sup>84</sup> See Cellular Telecommunications & Internet Association (CTIA) Comments at 4.

<sup>85</sup> According to the Joint Explanatory Statement, the purpose of the 1996 Act is “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. . . .” Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104<sup>th</sup> Cong., 2d Sess. at 113 (Joint Explanatory Statement).

<sup>86</sup> See *Western Wireless Pine Ridge Order*, 16 FCC Rcd 18137, para. 12.

<sup>87</sup> 47 U.S.C. § 254(b)(1).

<sup>88</sup> Cellular South Petition at 16.

<sup>89</sup> *Id.* at 6.

<sup>90</sup> See, e.g., *Twelfth Report and Order*, 15 FCC Rcd at 12237-38, paras. 56-58.

<sup>91</sup> 47 U.S.C. § 214(e)(6) (stating that before designating an additional ETC for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest). See also 47 U.S.C. § 254(b)(3).

214(e)(4).<sup>92</sup> Here, however, Cellular South demonstrates both the commitment and ability to provide service to any requesting customer within the designated service area using its own facilities.<sup>93</sup> Thus, there is no reason to believe that consumers in the affected rural areas will not continue to be adequately served should the incumbent carrier seek to relinquish its ETC designation. We find nothing in the record before us to indicate that Cellular South may be unable to satisfy its statutory ETC obligations after designation. In addition, nothing in the record indicates that any of the affected rural telephone companies have intentions of relinquishing their ETC designations.

28. Based on the record before us, we conclude that grant of this ETC designation is consistent with the public interest. The Alabama Commission and the Alabama Rural LECs argue that rural areas will be harmed by competition, particularly where there may be more than one competitive ETC, such as areas served by Butler Telephone Company and Millry Telephone Company, which are also served by the competitive ETC RCC Holdings.<sup>94</sup> Consistent with our recent decision in the *RCC Holdings Order*,<sup>95</sup> we find that the parties opposing this designation have not presented persuasive evidence to support their contention that designation of an additional ETC in the rural areas at issue will reduce investment in infrastructure, raise rates, reduce service quality to consumers in rural areas or result in loss of network efficiency.<sup>96</sup> The Alabama Rural LECs have merely presented data regarding the number of loops per study area, the households per square mile in their wire centers, and the high-cost nature of low-density rural areas.<sup>97</sup> The evidence submitted is typical of most rural areas and does not, in and of itself, demonstrate that designation of Cellular South as an ETC will harm the affected rural telephone companies or undermine the Commission's policy of promoting competition in all areas, including high-cost areas.<sup>98</sup> Moreover, the federal universal service support mechanisms support all lines served by ETCs in rural and high-cost areas.<sup>99</sup> Under the Commission's rules, Cellular South's receipt of high-cost

---

<sup>92</sup> See *Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18139, para. 16. We note that even if the incumbent carrier determined that it no longer desired to be designated as an ETC, section 214(e)(4) requires the ETC seeking to relinquish its ETC designation to give advance notice to the Commission. Prior to permitting the ETC to cease providing universal service in an area served by more than one ETC, section 214(e)(4) requires that the Commission "ensure that all customers served by the relinquished carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier." The Commission may grant a period, not to exceed one year, within which such purchase or construction shall be completed. 47 U.S.C. § 214(e)(4).

<sup>93</sup> We note, however, that an ETC is not required to provide service using its own facilities exclusively. Section 214(e)(1)(A) allows a carrier designated as an ETC to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services." 47 U.S.C. § 214(e)(1)(A).

<sup>94</sup> In the service areas of Butler and Millry, Cellular South and RCC Holdings propose to serve the same wire centers. See Alabama Commission Reply Comments at 2-3, 8; Alabama Rural LECs Reply Comments at 5-9. See also *RCC Holdings Order*, Appendix C.

<sup>95</sup> See *RCC Holdings Order* at para. 26.

<sup>96</sup> See Alabama Commission Reply Comments at 3; NTCA Comments at 5; Alabama Rural LECs Comments at 15; Alabama Rural LECs Reply Comments at 4-5. See Rural LECs Sept. 5 *ex parte*. In discussing network efficiencies, the Alabama Rural LECs contend that in high-cost, low density areas, there is a loss of efficiency in the network when more than one carrier serves the same territory. The Alabama Rural LECs do not state, however, whether their argument extends to a wireless competitor that provides new lines to unserved customers or second lines to existing customers. See Rural LECs Sept. 5 *ex parte* at 1, 3-4, and 8-9.

<sup>97</sup> For example, although Butler indicates that 71% of its study area contains less than 100 households per square mile and its study area's average density is 10.2 households per square mile, it provides no evidence to show the harm that would come to Butler as a result of Cellular South's ETC designation. See Rural LECs Sept. 5 *ex parte* at 2.

<sup>98</sup> See *Universal Service Order*, 12 FCC Rcd at 8802-03, para. 50.

<sup>99</sup> *Id.*

support will not affect the per-line support amount that the incumbent carrier receives.<sup>100</sup> Therefore, to the extent that Cellular South provides new lines to currently unserved customers, provides second lines to existing wireline subscribers, or captures customers from the existing competitive ETC RCC Holdings, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve.<sup>101</sup>

29. Additionally, consistent with our reasoning in the *RCC Holdings Order*,<sup>102</sup> we conclude that designation of Cellular South as an ETC does not raise the rural creamskimming concerns alleged by the Alabama Rural LECs and NTCA.<sup>103</sup> Rural creamskimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area.<sup>104</sup> In this case, Cellular South, because the contour of its CMRS licensed area differs from the existing rural telephone companies' study areas, will be unable to completely serve the study areas of three rural telephone companies -- Butler, Frontier-AL, and Frontier-South. Generally, a request for ETC designation for an area less than the entire study area of a rural telephone company might raise concerns that the petitioner will be able to creamskim in the rural study area.<sup>105</sup> In this case, however, Cellular South commits to provide universal service throughout its licensed service area. It therefore does not appear that Cellular South is deliberately seeking to enter only certain areas in order to creamskim.

30. We recognize, however, that the lowest cost portions of a rural study area may be the only portions of the affected study area that a wireless carrier is licensed to serve, which theoretically could have an adverse impact on a rural telephone company. NTCA argues that Cellular South should not be designated as an ETC if this is the case.<sup>106</sup> We find, however, that such concerns regarding de facto creamskimming are minimized by the facts in this case. Our analysis of the population data for each of the affected rural wire centers, including the wire centers not covered by Cellular South's licensed service area, reveals that Cellular South will not be serving only the low-cost portions of the affected study areas to the exclusion of high-cost areas.<sup>107</sup> Although there are other factors that define high-cost areas, a low population density typically indicates a high-cost area.<sup>108</sup> Based on the population density information

<sup>100</sup> See *RTF Order*, 16 FCC Rcd at 11299-11309, paras. 136-164.

<sup>101</sup> See e.g. *Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18138-39, para. 15.

<sup>102</sup> See *RCC Holdings Order* at paras. 27-31.

<sup>103</sup> See Alabama Rural LECs Comments at 15-20; Alabama Rural LECs Reply Comments at 10; NTCA Comments at 4-5.

<sup>104</sup> See *Recommended Decision*, 12 FCC Rcd at 180, para. 172. Creamskimming refers to the practice of targeting only the customers that are the least expensive to serve, thereby undercutting the ILEC's ability to provide service throughout the area. See, e.g., *Universal Service Order*, 12 FCC Rcd at 8881-2, para. 189.

<sup>105</sup> See *Recommended Decision*, 12 FCC Rcd at 180, para. 172 (stating that potential creamskimming is minimized when competitors, as a condition of eligibility for universal service support, must provide services throughout a rural telephone company's study area).

<sup>106</sup> See NTCA Comments at 4.

<sup>107</sup> Using the household count from the 2000 Census, the Alabama Rural LECs filed an *ex parte* providing data on households per square mile in the wire centers of the rural telephone companies. See Letter from Mark D. Wilkerson, Counsel for the Alabama Rural LECs, to Marlene Dortch, FCC, dated Sept. 6, 2002 (Rural LECs Sept. 6 *ex parte*).

<sup>108</sup> See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19628, para. 28 (2001) (*MAG Order*), *recon. pending* (discussing Rural Task Force White Paper 2 at

submitted in this proceeding, we find that Cellular South will not be serving only areas that are low-cost to the exclusion of high-cost areas.<sup>109</sup> In fact, our analysis reveals that Cellular South is serving many of the higher-cost, lower-density wire centers in the study areas of Butler, Frontier-AL, and Frontier-South.<sup>110</sup> The average population density for areas served by rural carriers is 13 persons per square mile, compared with an average of 105 persons per square mile for areas served by non-rural carriers.<sup>111</sup> Four of the five wire centers that Cellular South proposes to serve in Butler's study area have fewer than 13 households per square mile and two of those five have fewer than 10 households per square mile. Six of the nine wire centers that Cellular South proposes to serve in Frontier-AL's study area have fewer than 10 households per square mile. The four wire centers that Cellular South proposes to service in Frontier-South's study area all have fewer than 10 households per square mile.

31. Moreover, another factor that supports our finding that designation of Cellular South as an ETC does not raise rural creamskimming concerns is that Butler, Frontier-AL, and Frontier-South have filed disaggregation and targeting plans with the Alabama Commission and the Universal Service Administrative Company (USAC).<sup>112</sup> In the *RTF Order*, the Commission determined that support should be disaggregated and targeted below the study area level to eliminate uneconomic incentives for competitive entry caused by the averaging of support across all lines served by a carrier within its study area.<sup>113</sup> Under disaggregation and targeting, per-line support is more closely associated with the cost of providing service.<sup>114</sup> The three rural telephone companies have disaggregated and targeted available support in their study areas to zones at the wire center level, creating "low-cost" zones and "high-cost" zones. Based on our review of their plans, the per-line support available to competitive ETCs in the wire centers located in "low-cost" zones is less than the amount a competitive ETC could receive if it served in one of the wire centers located in the "high-cost" zones. Therefore, the Alabama Commission's concern that disaggregation and targeting support may not limit creamskimming is not supported by the disaggregation data in this case.<sup>115</sup> If Cellular South were to attempt to receive a windfall by serving only the lower cost areas in a disaggregated and targeted service area, it would not succeed because it is limited to receiving the per-line support established by the rural telephone company in a "low-cost" zone. The fact that disaggregation and targeting is in effect for these three rural telephone companies supports our finding that creamskimming is not a concern.

32. Finally, we note that several parties express concern about the nature of high-cost support with regard to competitive ETCs. Specifically, several commenters express concern about subsidizing

---

<<http://www.wutc.wa.gov/rtf>>) (stating that "[r]ural carriers generally serve more sparsely populated areas and fewer large, high-volume subscribers than non-rural carriers" and that "[t]he isolation of rural carrier service areas creates numerous operational challenges, including high loop costs, high transportation costs for personnel, equipment, and supplies, and the need to invest more resources to protect network reliability").

<sup>109</sup> See Rural LECs Sept. 6 *ex parte*.

<sup>110</sup> *Id.*

<sup>111</sup> See *MAG Order*, 16 FCC Rcd at 19628, para. 28, n.79.

<sup>112</sup> See *USAC: High Cost Disaggregation - Checklist* (printed Aug. 13, 2002) at <<http://www.universalservice.org/hc/disaggregation/checklist.asp>>. (USAC Disaggregation Checklist). The USAC Disaggregation Checklist lists the rural telephone companies that have filed disaggregation plans and indicates which disaggregation paths were chosen by the LECs that filed. The USAC Disaggregation Checklist for Alabama only listed companies that filed disaggregation plans or certified that they did not wish to disaggregate. Incumbent LECs that fail to select a disaggregation path by the deadline set by the Commission are not permitted to disaggregate and target federal high-cost support unless ordered to do so by the state commission. See 47 C.F.R. § 54.315(a).

<sup>113</sup> See *RTF Order*, 16 FCC Rcd at 11302, para. 145.

<sup>114</sup> *Id.*

<sup>115</sup> Alabama Commission Reply Comments at 5.

multiple lines of different technologies used by the same subscriber.<sup>116</sup> The Alabama Rural LECs claim that as the number of companies eligible to receive funding increases, the resulting demand on universal service funding could raise the cost of the support mechanisms to an unsustainable level.<sup>117</sup> In addition, NTCA states that, although the Commission's rules require that a competitive ETC will receive support to the extent it "captures" the subscriber lines of an incumbent local exchange carrier (LEC), it is unclear whether the word "capture" means only instances where the subscriber abandoned the incumbent LEC's service for the competitor's service, or whether it includes instances where the subscriber adds service from the competitor in addition to the incumbent's service.<sup>118</sup> We recognize that these parties raise important issues regarding universal service high-cost support. We find, however, that these concerns are beyond the scope of this Order, which designates a particular carrier as an ETC. We note that the Commission has recently requested the Joint Board to provide recommendations on the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing service, as well as the Commission's rules regarding support for second lines."<sup>119</sup>

#### **D. Designated Service Area**

33. We designate Cellular South as an ETC throughout its CMRS licensed service area in the 302 and 292 BTAs. Cellular South is designated an ETC in the areas served by the non-rural carriers BellSouth Telecomm Inc., Contel of the South dba GTE System of the South, and GTE South, Inc., as listed in Appendix A.<sup>120</sup> Cellular South is also designated as an ETC in the areas served by rural telephone companies whose study areas Cellular South is able to serve completely, as listed in Appendix B.<sup>121</sup> We also designate Cellular South as an ETC for portions of three rural telephone company study areas that it is not licensed to serve completely, as listed in Appendix C, subject to the Alabama Commission's agreement on redefining the rural telephone companies' service areas by wire center boundaries.<sup>122</sup>

34. In the *RCC Holdings Order*, we proposed to redefine by wire center boundary the service areas of several rural telephone companies, including Butler, Frontier-South, and Frontier-AL.<sup>123</sup> In this case, due to the boundaries of Cellular South's CMRS licensed service area in Alabama, however, there will be one rural wire center that Cellular South will not be able to serve completely – the Butler wire

---

<sup>116</sup> See Alabama Commission Reply Comments at 2-3; Alabama Rural LECs Reply Comments at 5-9; NTCA Comments at 8.

<sup>117</sup> See Alabama Rural LECs Comments at 16-18; Alabama Rural LECs Reply Comments at 5-9; Rural LECs Sept. 5 *ex parte*.

<sup>118</sup> NTCA Comments at 8. See also 47 C.F.R. § 54.307.

<sup>119</sup> *Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 02-307, Order (rel. Nov. 8, 2002).

<sup>120</sup> See Cellular South Petition at 10, Exhibit D. The wire centers in Appendix A only partially served by Cellular South are depicted with the word "partial." We designate Cellular South as an ETC in these partially served wire centers pursuant to sections 214(e)(5) and (e)(6) of the Act. When designating a service area served by a non-rural carrier, the Commission may designate a service area that is smaller than the contours of the incumbent carrier's study area. See *Universal Service Order* at 8879-80, para. 185 (stating that if a service area were "simply structured to fit the contours of an incumbent's facilities, a new entrant, especially a CMRS-based provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent's area, giving the incumbent an advantage.").

<sup>121</sup> See Cellular South Petition at 10, Exhibit E.

<sup>122</sup> See Section III.E, *infra*. We note that the Commission has stated that the level of disaggregation should be considered when determining whether to certify an ETC for a service area other than a rural carrier's entire study area. See *RTF Order*, 16 FCC Rcd at 11308-9, para. 164. See also para. 32, *supra*.

<sup>123</sup> See *RCC Holdings Order* at para. 37.

center in Butler's study area.<sup>124</sup> We conclude that it is in the public interest to designate Cellular South as an ETC for the portion of the Butler wire center it is able to serve. Our analysis of the public interest in granting ETC status is not undercut by the partial nature of coverage in this limited instance. Our analysis of the consumer benefits, the potential harm to consumers, and the effect of this ETC designation on rural telephone companies does not change based on Cellular South's ability to serve only a portion of this wire center. The affected consumers in this wire center will benefit from the provision of competitive service. Further, parties have offered no evidence of harm regarding Cellular South's ability to partially serve one of the rural wire centers.

35. We also find that any concern that Cellular South will be creamskimming in the study area of Butler because it can only partially serve the Butler wire center is substantially minimized by the facts in this case. As discussed above, Cellular South seeks ETC designation throughout its licensed service area. Based on our analysis of population density as discussed in Section III.C, it does not appear that Cellular South will be serving only low cost areas to the exclusion of high-cost areas. Because Cellular South is serving all of the high-cost areas in Butler's study area, we find that any creamskimming concerns are substantially minimized. In addition, Butler has disaggregated its study area and therefore, as discussed above in Section III.C, we find that Cellular South's potential to creamskim in this area is substantially minimized. Thus, we conclude that it is in the public interest to designate Cellular South as an ETC in the study areas of Butler.

#### **E. Redefining Rural Telephone Company Service Areas For Purposes of ETC Designation**

36. Cellular South requests that the Commission redefine the service areas of Butler, Frontier-AL, and Frontier South because it is unable to serve the entire study areas of these telephone companies due to the limitations of its wireless service area license.<sup>125</sup> We need not address this request because we recently agreed to redefine the service areas of Butler, Frontier-AL, and Frontier-South in the *RCC Holdings Order*, such that each wire center is a separate service area.<sup>126</sup> Our redefinition proposal, however, is subject to review and final agreement by the Alabama Commission in accordance with applicable Alabama Commission requirements.<sup>127</sup> Accordingly, the redefinition of the rural telephone company service areas that Cellular South cannot serve completely will be effective on the date that the Alabama Commission agrees with our redefinition, as proposed in the *RCC Holdings Order*. Cellular South's ETC designation in these areas will be simultaneously effective on that date. In all other areas, as described herein, Cellular South's ETC designation is effective immediately. If after its review the Alabama Commission determines that it does not agree with the redefinition proposed in the *RCC Holdings Order*, we will reexamine our decision with regard to redefining the affected rural service areas.

### **IV. ANTI-DRUG ABUSE ACT CERTIFICATION**

37. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.<sup>128</sup> This certification

<sup>124</sup> We note that Cellular South will serve the majority of the Butler wire center. See Letter from B. Lynn F. Ratnavale, Counsel for Cellular South License, Inc., to Shannon Lipp, FCC, dated Nov. 14, 2002 (Cellular South Nov. 14 *ex parte*) (attached map).

<sup>125</sup> See Cellular South Petition at 11-13, Exhibit F.

<sup>126</sup> See *RCC Holdings Order* at para. 37.

<sup>127</sup> See para. 2, *supra*.

<sup>128</sup> 47 U.S.C. § 1.2002(a); 21 U.S.C. § 862.

must also include the names of individuals specified by section 1.2002(b) of the Commission's rules.<sup>129</sup> Cellular South has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.<sup>130</sup> We find that Cellular South has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

## V. ORDERING CLAUSES

38. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, Cellular South License, Inc. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER throughout its licensed service area in the state of Alabama to the extent described herein.

39. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. § 214(e)(5), and sections 0.91, 0.291 and 54.207(d) and (e) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.207(d) and (e), the request of Cellular South License, Inc. to redefine the service areas of Butler Telephone Company, Frontier Communications of the South, Inc., and Frontier Communications of Alabama, Inc. IS GRANTED PENDING the agreement of the Alabama Public Service Commission with our redefinition of the service areas for those rural telephone companies, *see Federal State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-3181 at para. 37 (rel. Nov. 27, 2002). Upon the effective date of the agreement of the Alabama Public Service Commission with our redefinition of the service areas for those rural telephone companies, our designation of Cellular South License, Inc. as an ETC for such areas as set forth herein shall also take effect.

40. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Wireline Competition Bureau to the Alabama Public Service Commission and the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey

Deputy Chief, Wireline Competition Bureau

---

<sup>129</sup> Section 1.2002(b) provides that a certification pursuant to that section shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b).

<sup>130</sup> *See* Cellular South Petition at 17, Exhibit H (Anti-Drug Abuse Act Certification).



## APPENDIX A

ALABAMA NON-RURAL WIRE CENTERS FOR INCLUSION IN  
CELLULAR SOUTH'S ETC SERVICE AREA

<b>BellSouth Telecomm Inc. – AL</b>	<b>Contel of the South dba GTE System of the South</b>	<b>GTE South, Inc.</b>
Livingston (LVTNALMA)	Grand Bay (GDBAALXA)	Andalusia (partial)
Demopolis (partial)	Irvington (IRSEALXA)	(ANDSALXA)
(DMPLALMA)	Bayou L. (BLBTALXA)	
York (YORKALMA)	Fowl River (FWRVALXA)	
Thomasville (partial)	Dauphin Island (DPISALXA)	
(THVLALMA)	Coffeeville (CFVLALXA)	
Jackson (JCSNALNM)	Panola (PANLALXA)	
McIntosh (MCINALMA)		
Mt. Vernon (MTVRALMA)		
Citronelle (CTRNALNM)		
Mobile(MOBLALSA)		
Mobile(MOBLALSE)		
Mobile(MOBLALPR)		
Mobile(MOBLALSH)		
Mobile(MOBLALAP)		
Mobile(MOBLALSK)		
Mobile(MOBLALOS)		
Mobile(MOBLALAZ)		
Mobile(MOBLALTH)		
Mobile(MOBLALBF)		
Mobile(MOBLALSF)		
Belle Fontaine (BLFNALMA)		
Bay Minette (BYMNALMA)		
Fairhope (FRHPALMA)		
Evergreen (EVRGALMA)		
Brewton (BRTOALMA)		
Flomaton (FMTNALNM)		
 <b>BellSouth Telecomm Inc.-MS</b>		
Quitman (QTMNMSMA)		

**APPENDIX B**

**ALABAMA RURAL TELEPHONE COMPANY STUDY AREAS FOR INCLUSION IN  
CELLULAR SOUTH'S ETC SERVICE AREA**

Castleberry Telephone Co.

Gulf Telephone Co.

Millry Telephone Co.

**APPENDIX C**

**ALABAMA RURAL TELEPHONE COMPANY WIRE CENTERS AND PORTIONS THEREOF  
FOR INCLUSION IN CELLULAR SOUTH'S ETC SERVICE AREA**

**Butler Telephone Company, Inc.**

Pennington  
Lisman  
Butler (Partial)  
Needham  
Grove Hill

**Frontier Communications of Alabama, Inc.**

Beatrice  
Peterman  
Finchburg  
Gosport  
Monroeville  
Frisco City  
Excel  
Repton  
Uriah

**Frontier Communications of the South, Inc.**

Vredenburg  
McCullough  
Huxford  
Atmore